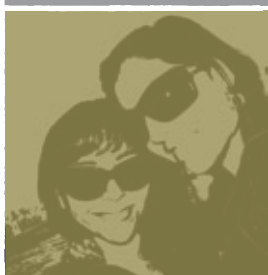
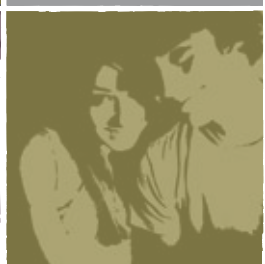
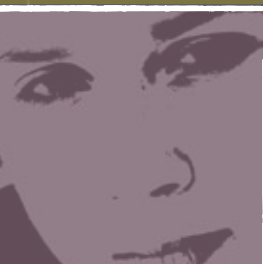


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# Releasing the pressure on remand

Bail support solutions for children and young people in New South Wales

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This paper is supported by the following peak and service provider organisations:

- Council of Social Service of NSW (NCOSS)
- Association of Children's Welfare Agencies (ACWA)
- Public Interest Advocacy Centre (PIAC)
- CREATE Foundation
- Aboriginal Child, Family and Community Care State Secretariat (AbSec)
- Youth Action Policy Association (YAPA)
- Youth Justice Coalition (YJC)
- UnitingCare Burnside
- Wesley Mission
- Anglicare
- Barnardos
- Catholic Social Services NSW/ACT.

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For more information about this position paper, please contact:

Clare Blakemore  
Policy Officer  
UnitingCare Burnside  
Ph: 9407 3219  
Email: [cblakemore@burnside.org.au](mailto:cblakemore@burnside.org.au)

Dev Mukherjee  
Senior Policy Officer  
Council of Social Service of NSW (NCOSS)  
Ph: 9211 2599 (ext 116)  
Email: [dev@ncoss.org.au](mailto:dev@ncoss.org.au)

Please see also:

UnitingCare Burnside's background paper, Locked into Remand, February 2009, available from UnitingCare Burnside's website: [www.burnside.org.au](http://www.burnside.org.au).



Youth Justice Coalition's Bail Me Out: Young Offenders and Bail Report, September 2009.



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## Introduction

This position paper has been developed in response to the Roundtable on Keeping Children and Young People out of Remand that was convened by the Council of Social Service of NSW (NCOSS) on 26 March 2009. Participants at the Roundtable discussion represented NCOSS, the Public Interest Advocacy Centre (PIAC), UnitingCare Burnside, CREATE Foundation, Wesley Mission, Anglicare, Barnardos, Catholic Social Services NSW/ACT, the Aboriginal Child, Family and Community Care State Secretariat (AbSec), the Youth Action Policy Association (YAPA) and the Youth Justice Coalition (YJC).

A background paper, *Locked into Remand*, was developed by UnitingCare Burnside for the Roundtable discussion. Overall, the response to *Locked into Remand* was extremely positive with service providers acknowledging the need to address the issues outlined in the paper. This position paper highlights the key issues and solutions that were discussed at the Roundtable meeting.

## What is happening?

An increasing number of children and young people in New South Wales are being held on remand in the state's Juvenile Justice Centres. This is due to current policies that make it unnecessarily difficult for children and young people to access bail and result in children and young people remaining in detention on remand when they should be on bail.

A child or young person is considered to be on remand when they are in detention but have not yet been sentenced. In 2006, 3,623 children and young people were admitted to custody on remand and by 2008 this figure had jumped to 5,081 (NSW Auditor-General 2008).

Only one in seven, or 16 per cent of children and young people on remand will go on to receive a custodial penalty at sentencing (Special Commission of Inquiry into Child Protection Services in NSW). This means that the vast majority of children and young people are spending time unnecessarily in a detention centre. 623 children and young people were actually in custody on a control order in 2008 (NSW Auditor General 2008). Therefore, in 2008 there were approximately 4,400 children and young people who were placed on remand in a Juvenile Justice Centre that a court judged were not required to serve a custodial sentence.

## What are the consequences?

The consequences of a high remand rate include the following key issues:

- Unnecessary detention increases the challenges that children and young people face and potentially creates social problems.
- According to a recent report, the high incarceration rate of Aboriginal and Torres Strait Islanders is damaging Indigenous communities (Gibson 2009). In NSW, 38.8% of all children and young people on remand in 2008 were Aboriginal or Torres Strait Islander (NSW Auditor-General 2008).
- A higher number of children and young people on remand than on custodial order has the potential to shift the focus in Juvenile Justice Centres "away from programs and development towards security warehousing" as more resources are directed towards the remandees (Dambach 2007, p.170).

- Recent allegations of overcrowding and increased assaults in Juvenile Justice Centres throughout New South Wales suggest a serious impact on the safety of both staff and the children and young people (Clennell 2009).
- Of great concern is that research indicates that time in a Juvenile Justice Centre is the “most significant factor in increasing the odds of recidivism” (Holman & Ziedenberg 2006, p.4).
- Considering only one out of every seven remandees in New South Wales will receive a custodial order at sentencing, thousands of children are being unnecessarily exposed to an environment that can have a detrimental effect on their future life chances, and a higher number of children and young people are at risk of cycling through the prison systems.

As a result, these policies are likely to compound rather than alleviate juvenile crime in New South Wales.

## Why is this happening?

### Lack of suitable accommodation

When a child or young person who is homeless or in need of care is charged with a criminal offence they are often given an order as part of their bail conditions to ‘reside as directed by the Department of Community Services’ (Dambach 2007).

This means that the court believes that the young person will be unable to meet bail conditions if they return to their usual place of residence, due to instability, safety or homelessness issues. The court therefore requests that the Department of Community Services (DoCS) find appropriate accommodation for the child or young person. The court is not proposing that the child or young person be remanded in custody.

However, in many cases the ‘reside as directed’ order effectively turns into an order to remain on remand as DoCS is frequently unable to find acceptable placements for these children and young people (Dambach 2007; NSW Law Reform Commission 2005). Despite DoCS’ clear responsibility to these children and young people as per Section 9(e) of the Children and Young Persons (Care and Protection) Act 1998, the dearth of suitable accommodation options results in a high rate of remand for children and young people who should be out on bail in the community. Statistics from the Department of Juvenile Justice demonstrate that 95 percent of children and young people on remand during a three month period in 2006/07 had a court order to ‘reside as directed’ (Special Commission of Inquiry into Child Protection Services in NSW 2008).

### 2007 Amendments to the Bail Act 1978 (s.22A) and a stretched Legal Aid system

NSW Attorney-General, John Hatzistergos, acknowledges that New South Wales has the toughest bail laws in Australia (Haesler 2008). In 2007, the Bail Act 1978 was amended with the introduction of Section 22A. Under this amendment children and young people can only apply once for bail except under particular circumstances. If bail is not granted during the first application they may only apply again if they were not legally represented during the first application or if the court is satisfied that new facts or circumstances have arisen since the first application (Haesler 2008).

A recent report by the NSW Bureau of Crime Statistics and Research demonstrates that this amendment has directly impacted on the increase in remandees in custody as children and young people are remaining on remand for a longer period of time, unable to reapply for bail (Vignaendra et al 2009).

Exacerbating this situation is a stretched Legal Aid system where “on a bad day” one magistrate and one duty solicitor may be dealing with 50 bail cases (Haesler 2008). In these circumstances, a child or young person is not guaranteed sufficient representation by the duty solicitor despite it being their only opportunity to access bail.

### **Bail restrictions: non-association orders, reporting, area restrictions and curfews**

Another group of children and young people are granted bail but end up back on remand in the Juvenile Justice Centres because their bail restrictions include non-association orders, area restrictions, curfews and other restrictions that are extremely challenging for the children and young people to comply with (NSW Law Reform Commission 2005). Even if a child or young person is able to obtain bail, they can find themselves back in the Juvenile Justice Centre after being found in breach of a bail restriction. In 66% of cases where children and young people are remanded back to a Juvenile Justice Centre after breaching their bail restrictions, their breach is as simple as not complying with a curfew order or not being in the company of a parent (Vignaendra et al 2009).

“Proactive policing of compliance with bail conditions” as per the NSW State Plan, has impacted on the number of children and young people on remand (NSW Ombudsman 2008, p.120). These orders reflect targets in the NSW State Plan which seek a reduction in re-offending by 10% by 2016 and states this will be achieved through “extended community monitoring of those at high risk of re-offending, through more random home visits and electronic monitoring” (NSW Government 2006, p.17).

However, severe bail restrictions and proactive policing may effectively criminalise the young person’s non-offending behaviour and create conditions where the child or young person is more likely to re-offend.

## **What are the solutions?**

While we believe that children and young people are responsible for their actions and should face the penalty for any illegal actions, we believe that the current system has the potential to increase the risk factors for re-offending and does not always provide the support children and young people need.

Young people can be successfully supported in making changes at any point in their engagement with the juvenile justice system. However, in order to effectively divert young people from the juvenile justice system, a range of support services must be available.

These support services should have a stronger focus on keeping these children and young people connected with the community, engaged with education and ultimately out of the juvenile justice system, and in turn, the adult prison system.

These support services should fall into four main areas:

- Early intervention
- Before court
- During court
- After court.

## Current programs

Currently, there are a number of successful programs developed in Australia across these four support areas. While some of these programs are not based in NSW or aimed at children and young people, we believe that they are examples of successful models that could be adapted to support children and young people in the juvenile justice system. These programs can be found in the appendices at the end of the report.

### Early intervention

Children and young people who are at risk of offending should have immediate access to early intervention services in NSW. These services should help the children and young people re-engage with the community through social, educational and vocational opportunities.

A recent report released by the National Indigenous Drug and Alcohol Committee acknowledges the particular importance of early intervention programs and successful diversion within the Indigenous population in order to stem the increase of Indigenous offenders (National Indigenous Drug and Alcohol Committee 2009).

### Before court

Children and young people who are charged with a crime should have immediate, mandated support to help them successfully navigate the legal system. Many children and young people who are involved with the juvenile justice system do not have strong family support networks to lean on during this high stress period.

Mandated support could assist with finding appropriate accommodation options and remain present during the court process. This could result in a reduction of the number of children on remand and an increase in the numbers of children and young people who can successfully understand the court process and gain realistic bail conditions.

We welcome the NSW Government's recent establishment of a 24-hour Bail Hotline as part of the 'Before Court' support. While the full details of the Bail Hotline are not yet available, we believe it is an important first step to developing further services to assist children and young people access bail, meet bail conditions and find appropriate accommodation options.

### During court

Children and young people have access to the Children's Legal Service when attending court. However, as discussed previously, these services are often stretched to capacity and place children and young people at risk of receiving insufficient legal support. The current bail laws, which govern bail applications from both children and young people and adults, exacerbate this situation.

Children and young people should not be limited to one chance at accessing bail as this restricts the rights afforded to them under the International Convention of the Rights of the Child. In order to place the safety and wellbeing of children and young people at the forefront of government policy, all children and young people should be exempt from Section 22A of the Bail Act.

## After court

Juvenile Justice Centres should not be used as a form of crisis accommodation for children and young people. Alternate accommodation options should be available for those children and young people who are granted bail but held on remand due to insufficient accommodation options. Brokerage support should also be available for children and young people and their families who need monetary assistance in order to meet bail conditions (ie transportation costs).

More comprehensive community support and further brokerage support should be available for those children and young people who are granted bail under strict bail conditions and are able to live in the community. Furthermore, the strict bail conditions should be realistic for children and young people to comply with and they should be policed with a degree of flexibility.

Some successful examples of bail support/accommodation programs exist currently in the community. However, these programs are on a small scale and are not all available throughout NSW. Please see Appendix 4 for more information on these programs.

## What will fill the gap?

### Residential Bail Support Program

Children and young people who are granted bail but remain on remand due to a lack of accommodation options should have access to a 'Residential Bail Support Program'. This program will increase the currently limited accommodation and support options for children and young people in the juvenile justice system on remand and will increase the referral options for the Bail Hotline.

The children and young people accessing this service will be those who are still unable to find appropriate accommodation after assistance from 'Before Court' support services. In particular, the program will assist children and young people who are already homeless, under the care of the Minister for Community Services and/or who receive a 'reside as directed' order.

The Residential Bail Support Program would be funded by the NSW Government and delivered by the non-government sector. This is in keeping with the principles of Keep Them Safe that non-government organisations have greater capacity to establish links with appropriate educational, therapeutic and community support services for the children and young people. Children and young people using the Residential Bail Support Program would receive case management to provide appropriate support while on bail and leading into the court process. The Residential Bail Support Program would also provide greater links to community support and provide more opportunities to build family ties.



Similar programs have been recommended by the Australian Law Reform Commission and the NSW Ombudsman (Australian Law Reform Commission 1997). They suggest that these are particularly important for Aboriginal and Torres Strait Islander children and young people.

The program would provide 24 hour support and accommodation for an average of four to five children and young people aged between 12-17 years. However, in certain circumstances the number of residents may be increased or reduced according to the needs of the children and young people. Each program would be limited to a maximum of six children and young people per day. These programs would need to be gender specific, and in some cases, culturally specific.

Each program would cost approximately \$875,000 per annum. This figure is based on each program operating 24 hours per day, 7 days per week with a minimum of two direct care/caseworkers per shift, a manager, administration officer and some brokerage funding. Programs could operate in key locations such as Dubbo, Wagga Wagga, Coffs Harbour/ Lismore, Newcastle, Wollongong, Western and South Western Sydney.

Based on figures by the Department of Juvenile Justice and released by the Bureau of Crime Statistics and Research, these programs would be comparable to the cost of remand detention (Vignaendra et al 2009). However, better short- and long-term outcomes and cost-savings would be evident. Lessening the numbers of children and young people on remand would put downward pressure on an overloaded system and the issues that are emerging as a result. In addition, the programs would reduce the risk of recidivism for children and young people who have contact with a juvenile justice centre. Establishing these programs would be an investment in the safety and wellbeing of children and young people, both in the short and long term.

## Recommendations

The key recommendations from this position paper are to:

- implement the Residential Bail Support Program
- amend the Bail Act 1978 to ensure that children and young people are exempt from Section 22A
- increase the resourcing of early intervention programs for children and young people at risk of entering the juvenile justice system
- implement mandated before court support for all children and young people who are charged with a criminal offence
- change court processes to ensure that a lack of accommodation is not sufficient reason to refuse bail to a child or young person.

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## Appendix 1 – Early intervention services

Successful early intervention programs in New South Wales include the following two programs:

### *Reconnect*

While this program is not specifically targeted at children and young people in the juvenile justice system it provides support to young people who are homeless, or at risk of homelessness, and their families. This support can include counselling, mediation and other practical supports.<sup>1</sup>

### *Intensive Intervention Camp*

This camp was run by the Pacific Education Resource Exchange (PERX), which was a program run by Wesley Mission. PERX worked with the local police, schools and community members to identify 14 children and young people, aged around 10-12 years, who were at a high-risk of entering the juvenile justice system and/or being expelled from school. These 14 children went on a four day camp with 16 adults, including workers from PERX, local police officers and Home School Liaison Officers.

During these four days the children underwent team-building activities, spent time learning more about Pacific Islander culture, developed an understanding of what the police do and who they are and were encouraged to communicate openly in a safe environment. The children were taught about hygiene, cooking, rules and boundaries and were presented with appropriate role-models. Since attending the camp, 100% of the children have not committed an offence. Despite the high success rate, this program is no longer funded under the DoCS Community Services Grants Program.

A program currently running in New South Wales that the NSW Government identifies as an early intervention program is:

### *Anti-social Behaviour Pilot Project*

This pilot project seeks to improve case co-ordination between government agencies for young people exhibiting anti-social behaviours. It is predicated on the belief that these young people require services from more than one NSW Government agency to get them back on track. To be eligible for case co-ordination a young person must meet all the following criteria, that:

- they are a risk to themselves and/or others
- they are aged under 25 years
- they reside in or are a regular visitor to a pilot location
- they have complex needs that cannot be managed by a single agency and
- previous single agency intervention has not been successful.

The pilot is meant to respond to needs quickly at the local level to support high risk children and young people with the aim of preventing criminal activity.

<sup>1</sup> Department of Families, Housing, Community Services and Indigenous Affairs 2009, Reconnect, Commonwealth of Australia, Australia, viewed June 2009 <<http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/Pages/reconnect.aspx>>

## Appendix 2 – Before court

Some successful examples of court and accommodation support models include:

### *Victorian After Hours Bail Placement Support Service*

This is an after-hours service that provides support to children and young people aged 10-18 who commit an offence and are being considered for remand or who need accommodation options in order to access bail.<sup>2</sup> During business hours these children and young people are referred to the regional youth justice unit. Police must notify either of these services when recommending the remand of a child or young person. This service was recommended by Justice Wood in the report on the Special Commission of Inquiry into Child Protection Services in NSW. In the 2009/2010 Budget, the NSW Government announced the operation of a Bail Hotline for young people under 18 years being held by the police to reduce the number of young people remanded into custody.

### *Police Domestic Violence Liaison Officers*

The Police DVLOs are an example of a successful support program that aims to assist victims of domestic violence from the moment that they report the crime to the police. The DVLOs are trained to work with victims of domestic violence. They provide support and advice about legal and financial matters, can provide assistance accessing safe accommodation or other support services and can support the victim during the court proceedings.

A similar Liaison Officer for children and young people suspected of committing a crime would provide assistance and advice from the moment a young person is arrested. This Officer would provide advice on the court processes, assist the young person to find appropriate accommodation and support the young person during their bail hearing. This role could sit alongside the Bail Placement Support Service (explained above).

## Appendix 3 – During court

The current programs available to assist children and young people during court are:

### *Children's Legal Service*

The Children's Legal Service provides free legal assistance and representation to all children and young people under 18 who are involved in a criminal case. They are based at three Children's Court locations in NSW and can also provide support through Legal Aid at other Children's Court locations. A law hotline is also available for children and young people who need legal assistance.<sup>3</sup>

### *Children's Court Assistance Scheme*

CCAS is available at a number of the Children's Courts in NSW and is staffed by volunteers. These volunteers are available to assist young people who have been charged with a criminal offence. They can provide advice on the court processes and legal proceedings and can assist with referrals to other services including accommodation.

<sup>2</sup> Department of Human Services 2007, 'Central After Hours Assessment and Bail Placement Service' Youth justice fact sheet, 23 April 2007, Victorian Department of Human Services, viewed January 2009  
<[http://www.cyf.vic.gov.au/\\_data/assets/pdf\\_file/0013/44302/yj\\_factsheet\\_cahabps\\_23042007.pdf](http://www.cyf.vic.gov.au/_data/assets/pdf_file/0013/44302/yj_factsheet_cahabps_23042007.pdf)>

<sup>3</sup> Legal Aid NSW 2008, Children's Legal Service, Legal Aid NSW, Sydney, viewed June 2009  
<<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=494>>

## Appendix 4 – After court

Successful after court support programs include the following four initiatives:

### *Queensland Conditional Bail Program and Youth Bail Accommodation Support Service*

These are two different programs available for children and young people in the juvenile justice system in Queensland. The Conditional Bail Program is available for young people 10-16 years who are facing remand and are considered by the court to be unlikely to comply with bail.<sup>4</sup> The program provides youth worker support to the young person and engages them with social, educational and vocational activities in order to reduce the risk of offending while on bail.<sup>5</sup>

The Youth Bail Accommodation Support Service is available for children and young people who are facing remand due to insufficient accommodation options, or who are on bail but are at risk of being remanded in custody due to accommodation instability.<sup>6</sup> It provides brokerage services and youth worker support and maintains working agreements with SAAP accommodation services.

### *ALIVE and Free (JTAP)*

ALIVE and Free is a partnership between the Department of Juvenile Justice, Housing NSW, Bridge Housing and Catholic Care. This program has been running for 12 years. Young people 16 years and over who are already in the juvenile justice system on an order are eligible for this program. This program provides living skills and support around employment, education, legal issues and family issues. It works to exit the young person successfully into longer term priority housing with Housing NSW.

### *Juniperina Shared Access Trial*

This trial is a partnership between DoCS, Housing NSW and DJJ. It provides housing and support to young women 16-21 years who are at risk of re-offending.<sup>7</sup> This trial includes young women on bail order and is an example of the sort of holistic approach that may work for children and young people in NSW who need appropriate accommodation in order to access bail. This program should be considered further, as part of the development of a comprehensive Residential Bail Support Program.

### *Stay Safe*

This is a program for 12-17 year olds referred through the Department of Juvenile Justice who are in need of accommodation and support in order to reduce the risk of reoffending.<sup>8</sup> Based on the information available it appears that this program has limited resources and is unable to meet the current growth rate of children and young people on remand.

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<sup>4</sup> Venables, P. & Rutledge, R. 2003, 'The Conditional Bail Program: Early Intervention without Net Widening', A conference paper presented at Juvenile Justice: From Lessons of the Past to a Road Map for the Future, Australian Institute of Criminology, 1-2 December 2003, viewed January 2009 <<http://www.aic.gov.au/conferences/2003-juvenile/venables.html>>

<sup>5</sup> Ibid

<sup>6</sup> Ibid; King, J. & Hegarty, D. 2002 'Bail Support Services in Queensland: A Collaborative Approach to Crime' A conference paper presented at the Crime Prevention Conference, Australian Institute of Criminology and the Crime Prevention Branch, Commonwealth Attorney-General's Department, 12-13 September 2002, viewed January 2009 <<http://www.aic.gov.au/conferences/crimpre/hegarty.html>>

<sup>7</sup> NSW Department of Community Services 2008, 'Agency partnership boosts support for people with complex needs', insideout September/October 2008, NSW Department of Community Services, Ashfield, viewed January 2009 <[http://www.community.nsw.gov.au/docswr/\\_assets/main/documents/insideout/insideout\\_septoct08.pdf](http://www.community.nsw.gov.au/docswr/_assets/main/documents/insideout/insideout_septoct08.pdf)>

<sup>8</sup> YES Youth and Family Services website 2005, Youth and Family Services, NSW, viewed September 2008 <<http://www.yes.asn.au/>>

A pilot program recently introduced by the NSW Government is:

*Youth Conduct Orders Scheme*

Youth Conduct Orders (YCOs) are set by a court for any young person under the age of 18 who is living in the pilot area and has been charged with an offence. A young person may be referred to the YCO scheme by either the police or the court, however the provisions of the order must be set by the Children's Court.

YCOs restrict a young person's conduct and direct them to attend or complete specific activities such as education or training. The restrictions can include determinations on who the young person can see and where they may live and what curfews must be followed. Support is provided by the Department of Juvenile Justice, DoCS, the Department of Education and Training, the Department of Health and the police. The effectiveness of this as a diversionary program has not been evaluated.



Prepared by UnitingCare Burnside in association with the Council of Social Service of NSW (NCOSS) and the Public Interest Advocacy Centre (PIAC) with the support of members of the Roundtable 'Keeping children and young people out of remand'.



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Social Justice, Partnerships and Communication  
UnitingCare Children, Young People and Families  
Level 8, 128 Marsden Street, Parramatta NSW 2151  
Ph: 9407 3200